

Serial No.--- 10/542,557

- 6 -

**REMARKS**

Claims 1-17 and 21-23 are pending. Claims 18-20 have been canceled. Thus, claims 1-17 and 21-23 remain for consideration.

**Objections to the Drawings.**

The drawings have been objected to because they allegedly do not show all of the features of the claims. Numeral 25 has been added to Fig. 1 to help to better define the air channel 25. The air channel has a numeral 25 pointing to the upper portion, as well a numeral 25 pointing to the lower portion. The numeral 13 indicating the tread area has been added to Fig. 6, which is a section taken along the line VI-VI of Fig. 5. Two numerals 25 have been added to Fig. 7 to indicate the extent or width of the air channel and is consistent with other Figures of the drawing, for example, Fig. 1 and Figs. 8 and 9. Thus, Applicant submits that the air channel located in the tread area in the sole along with the climate channel and central channel are shown. Claim 1, which does not recite a central channel, is fully supported by the drawing. The connection between the air channel 25 and the climate channels 26 in the tread area of the sock, as set forth in claim 1, is shown in Figures 7, 8, 9 and 10. The arrangement of climate channels 26 in conjunction with a central channel 262 is found in Figure 7. The drawing, as amended, shows all of the claimed features. Entry of the three replacement sheets of drawing and withdrawal of the objections to the drawing are solicited.

**Rejections under 35 U.S.C. 112.**

In view of the drawing amendments, Applicant submits that the rejection of Claims 1, 7, and 21-23 as allegedly failing to comply with the written description requirement should be withdrawn. The Office Action asserts that there is no support for the air channels being "located in the tread area in the sole along with the climate channels and the central channel". As noted

Serial No.--- 10/542,557

- 7 -

above, claim 1 does not recite a central channel. Claim 1 recites that the air channel (25) extends from the shaft portion 2 and terminates in a wider portion in the tread area (13), and that at least one climate channel (26) extends outwardly from and communicates with the wider portion of the air channel (25) for removing moisture. Figures 1, 8, 9, and 10 each show an air channel 25 connected to climate channels 26 on the sole of the sock. Figure 1 shows that the air channel 25 extends along the vertical length of the sock from the region near the top band of the sock, eventually curving around into a wider area in the tread area in the sole (see also paragraph 0029). Thus, there exists clear disclosure of the air channels and climate channels on the sole.

Claims 7 and 21-23 recite a central channel 262 connected to climate channels 26. This feature is clearly shown in Fig. 7. By the addition of the numerals 25 to Fig. 7, the air channel 25 is specifically identified. A person of ordinary skill in the art would recognize that the air channel (25) communicates with one or more climate channels in the tread area. From the drawing, for example, the side view shown in Figure 1, it is seen that the lower end of the air channel 25 curves under the arch of the sock and into the bottom or tread area of the sock. Paragraphs 0025 through 0030 indicate that an exemplary embodiment is shown in Figure 1, and that "air channel 25 extends from band 21 into the tread area 13" (paragraph 0029). Figures 2, 3, 5, and 7 schematically show the bottoms of various sock embodiments to illustrate different arrangements or configurations of climate channels 26 and an optional central channel 262. Figs. 8 and 9 clearly show an air channel 25 communicating with at least one climate channel in the tread area in the sole. In Fig. 8 the air channel 25 is on the inside of the sock and in Fig. 9 the air channel is on the outside of the sock. Based on the foregoing, Applicant submits that there is support in the disclosure for the climate channel 25 being located in the tread area of the sock and written description rejection should be withdrawn as to claims 7 and 21-23.

Serial No.---- 10/542,557

- 8 -

With regard to the rejection of claim 23 as failing to comply with the written description requirement, it is noted that the numeral 13 has been added to Fig. 6 to clearly identify the tread area. The structure and purpose of the climate channels 26 having an air gap is clearly described in paragraph [0031] of the specification. A person of skill in the art would readily recognize that the teaching of Fig. 6 and the description thereof in the specification could be applied to any desired climate channels. The written description requirement as to the climate channel having a gap is met by the present disclosure. Withdrawal of the 35 U.S.C. 112 rejection as to claim 23 is solicited.

**Anticipation Rejections.**

Claims 1, 2, and 9-12 have been rejected as being anticipated by Lambertz (US 6,286,151). Applicant is well aware of the Lambertz '151 patent, as it is an earlier patent of the Applicant herein. Anticipation requires that every claim element and limitation is set forth in a single prior art reference, in the same form and order as in the claim. *Abbott Laboratories*, 89 U.S.P.Q.2d at 1166. Additionally, an anticipating reference must enable that which it is asserted to anticipate. *Seymour v. Osborne*, 78 U.S. 516, 555 (1870). To anticipate, the claimed subject matter must not only be previously known, but the knowledge must be sufficiently enabling to place the information in the possession of the public. *Elan Pharmaceuticals, Inc. v. Mayo Foundation*, 346 F.3d 1051, 1054 (Fed. Cir. 2003). Applicant urges that none of the anticipation rejections on the basis of Lambertz satisfy the foregoing requirements.

The Lambertz patent discloses a climate-adjusting sock which has an air channel 3 proceeding from the sole 2 of the foot up to the band 4 and which is formed of climate-adjusting net-type knit fabric (col. 2, lines 35-42). In the interior, the sock 1 is provided with a padded instep cushion or padding 5, which can be ribbed, and in the area of the shin it is provided with a

Serial No.---- 10/542,557

- 9 -

padded shin cushion 6 (col. 2, lines 45-50). The area of the Achilles tendon is protected by means of padded cushions 7 (col. 2, lines 54, 55). The area of the calf is also provided with padded cushions whereby, in the example shown, rod-type paddings 8 are provided (col. 2, lines 62-64). The sock is also provided with an X-cross support band (col. 3, lines 1-3). The sole 2 of the sock 1 is equipped with additional padded cushions or paddings 10 and 11, particularly, in the area of the ball of the foot and/or in the area of the toes (col. 3, lines 6-10). The paddings 10 and 11 are not channels. Additional support bands may be arranged in the area of the ankle, namely, a ring-type support band 12 above the ankle and below that, an additional support band 13. It is possible to provide another diagonal support band 14 (col. 3, lines 28-32). These bands 13 and 14 are not channels.

Applicant submits that air channel 25 is a separate and distinct feature from the climate channels 26 in the present claims. The Lambertz patent relied upon by the Examiner discloses only air channels, but not climate channels extending outward from the air channel in the tread area of the sock, as claimed. Claims 1 and 12 recite that the climate channels 26 terminate in a wider portion in the tread area and that the climate channels extend outwardly from the wider portion of the air channel. Lambertz does not disclose separate and distinct climate channels extending outward from the air channel in the tread region of the sock. Lambertz does not show a bottom view of the socks described therein (all of the views are from the side). Since Lambertz does not disclose each of the features of the claimed socks, the rejections of claims 1, 2, 9, 10, 11, and 12 should be withdrawn.

Claims 1-9, 11-17, and 21-23 were rejected as being unpatentable over Ogden (US 5,708,985) in view of Lambertz (US 6,286,151). The Examiner recognizes that Ogden fails to teach an air channel extending from the shaft portion of a sock and terminating in a wider portion

Serial No.---- 10/542,557

- 10 -

in the tread area. Lambertz is relied upon to overcome the shortcomings of Ogden. The alleged basis for the combination of Ogden and Lambertz is that it would have been obvious to provide the sock of Ogden with the air channel of Lambertz, since the sock of Ogden provided with an air channel would provide a sock that allows for greater breathability and wicking away of moisture from the user's foot. The Ogden patent does not teach or suggest an air channel in the shaft of the sock that terminates in a wider portion in the tread area and communicates with climate channels in the tread area that extend outwardly from the wider area of the air channel as claimed in the present application. The various ribs 36 of Ogden in the tread area are spaced by gaps or spaces 44, but these gaps or spaces are not in communication with anything that could be described as an air channel that terminates in a wider portion in the tread area. Similarly, the gaps or spaces 44 do not extend outwardly from anything that can be described as an air channel, as presently claimed. The Office Action asserts that Ogden discloses a climate channel having a circular cross-section (as in claims 6, 15-17 and 23), citing Figures 2, 3, and 5 for support. Such assertion is erroneous, since Figures 2, 3, and 5 of Ogden show plan views, not cross-sections, much less circular cross-sections of a climate channel. In addition, Ogden does not disclose a climate channel having the essentially circular cross-section with a closable gap, as in claims 6, 15-17 and 23. The stated purpose of the Ogden gaps or spaces 44 is not to provide a channel for the flow of air or moisture. Rather, as described in col. 5, lines 50-63, "the skin of the plantar surface of the foot is "captured" between adjacent ribs 36 so as to substantially increase the frictional engagement between the sole portion 24 of the sock 10 and the foot, particularly in the longitudinal, or "front-to-back" direction. The teachings of Ogden and Lambertz are divergent and there is no reason to combine the references as suggested by the Examiner. When combining references,

Serial No.---- 10/542,557

- 11 -

the Examiner must identify a reason that would have prompted a person of ordinary skill in the art to combine the elements in the way the claimed invention does. Also, the Examiner must bear in mind the capabilities of a person of ordinary skill. In the present case, the fair teachings of the references undermines the very reason being proffered as to why a person of ordinary skill would have combined the known elements. The combination is based upon hindsight and not the fair teachings of the references themselves. Accordingly, this rejection is improper and should be withdrawn. Claims 1-9, 11-17, and 21-23 are in condition for allowance.

**Conclusion.**

Favorable reconsideration and allowance of the present application are solicited.

Respectfully submitted,

Date: November 17, 2010

By: Seymour Rothstein  
Seymour Rothstein  
(Reg. No. 19,369)

OLSON & CEPURITIS, LTD.  
20 North Wacker Drive  
36th Floor  
Chicago, Illinois 60606  
(312) 580-1180

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this **AMENDMENT AFTER FINAL REJECTION** with attached **Replacement Sheets 1-3** is being transmitted by facsimile to Fax No. 571-273-8300 on November 17, 2010.

By: Seymour Rothstein  
Seymour Rothstein